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Paper No. 10

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**MAY 19 2003**

**OFFICE OF PETITIONS**

In re Application of  
Canuel  
Application No. 09/829,391  
Filed: April 9, 2001  
Attorney Docket No. CAN-137  
For: SANITARY NAPKIN WITH BREATHABLE  
EXTENSION

**DECISION ON PETITION**

This is a decision on the petition under 37 CFR 1.137(a), filed May 12, 2003 (certificate of mailing date May 8, 2003), to revive the above-identified application. The petition will be treated under 37 CFR 1.181 as a petition to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **GRANTED**.

The petition under 37 CFR 1.137(a) is **DISMISSED AS MOOT**.

The application was held abandoned for failure to respond in a timely manner to a non-final Office action mailed on October 3, 2002. Having no record of receiving a reply, the Office contended that the application became abandoned on January 4, 2003. A Notice of Abandonment was mailed on April 15, 2003.

Petitioner asserts that a proper response was in fact timely filed in the form of an amendment. In support of his position, petitioner submitted a copy of a date-stamped post card receipt acknowledging receipt of an amendment in the United States Patent and Trademark Office (Office) on January 7, 2003. Petitioner submitted a copy of the amendment with the present petition.

The original response is not of record in the file and cannot be located. However, MPEP § 503 states, “[a] post card receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO.” Accordingly, it is concluded that the amendment was received in the Office but was not matched with the application file.

In addition, the amendment bears a proper certificate of mailing, dated January 2, 2003, in compliance with the requirements of 37 CFR § 1.8(a)(1). Under 37 CFR § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 CFR § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 CFR § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted

on or before the date indicated. The certificate of mailing found on the amendment and the date-stamped itemized postcard receipt establish that the amendment was timely filed.

The petition to withdraw the holding of abandonment under 37 CFR 1.181 is **GRANTED**.

Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

A petition under 37 CFR 1.181 to withdraw the holding of abandonment is a feeless petition. Therefore, the \$110.00 petition fee submitted on May 12, 2003 (certificate of mailing date May 8, 2003) will be credited to petitioner's deposit account no. 10-0750.

The application file will be forwarded to Technology Center 3700's technical support staff for entry of the amendment. Thereafter, the application file will be forwarded to the examiner of record for action in due course.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 308-6712.



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